

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOY GROSS, As Proposed Administratrix of the
ESTATE OF MARILYN PAGANO, JOY GROSS
Individually, THOMAS PAGANO, and LAURA
SMITH,

Plaintiffs,

v

BOAR'S HEAD PROVISION CO., INC., JOHN
DOES 1-10 (representing fictitious persons), and ABC
COMPANIES 1-10 (representing fictitious entities)

Defendants.

3:25-cv-00683-MAS-TJB

FIRST AMENDED COMPLAINT

Plaintiffs, JOY GROSS, As Proposed Administratrix of the ESTATE OF MARILYN PAGANO, JOY GROSS Individually, THOMAS PAGANO, and LAURA SMITH, by their attorneys, ELEFTERAKIS, ELEFTERAKIS & PANEK, by way of First Amended Complaint against Defendant, BOAR'S HEAD PROVISION CO., INC., JOHN DOES 1-10 (representing fictitious persons), and ABC COMPANIES 1-10 (representing fictitious entities), (collectively "Defendants") alleges, upon information and belief, as follows:

PARTIES

1. Plaintiff JOY GROSS is a surviving child of the Decedent, MARILYN PAGANO, and Proposed Administratrix of the ESTATE OF MARILYN PAGANO, and resides in Red Bank, New Jersey.
2. Plaintiff THOMAS PAGANO is the surviving spouse of the Decedent, MARILYN PAGANO, and resides in Port Monmouth, New Jersey.
3. Plaintiff, LAURA SMITH, is a surviving child of the Decedent, MARILYN PAGANO, and resides in Staten Island, New York.

4. Defendant BOAR'S HEAD PROVISION CO., INC. is a corporation duly organized and existing under the laws of the State of Florida, with its headquarters located at 1819 Main Street, Sarasota, Florida 34236.

FACTS AND ALLEGATIONS

1. The Decedent, MARILYN PAGANO, passed away on July 4, 2024, as a result of complications due to Listeria Meningoencephalitis.

2. Listeria Meningoencephalitis or Listeriosis is a serious infection caused by consuming food contaminated with the bacterium Listeria monocytogenes. The disease primarily affects individuals of advanced age, pregnant women, newborns, and adults with weakened immune systems. However, people without these risk factors can also be affected. There is no way for a consumer to know that they are consuming food contaminated with Listeria monocytogenes bacteria.

3. Listeriosis can cause a host of symptoms, including but not limited to fever, muscle aches, headache, stiff neck, confusion, loss of balance and convulsions sometimes preceded by diarrhea or other gastrointestinal symptoms. Listeria poisoning can quickly lead to an invasive infection that spreads beyond the gastrointestinal tract. Serious and sometimes fatal infections can occur. In other cases, listeria can cross the blood brain barrier and cause encephalitis and meningitis, often accompanied by a fever and neck, back, or head pain. Listeriosis is treated with antibiotics.

Boar's Head Product Listeria Outbreak

5. On July 19, 2024, the U.S. Food and Drug Administration ("FDA") and the Centers for Disease Control and Prevention ("CDC"), along with health and regulatory officials in several states, and the U.S. Department of Agriculture's Food Safety and Inspection Service ("USDA-

FSIS”), announced an investigation into the multistate outbreak confirmed cases of *Listeria monocytogenes*. To date, the CDC has identified multiple victims across various states that have fallen ill or passed away because of the Listeriosis outbreak.

6. As the investigation has unfolded, epidemiologic, laboratory, and traceback data pointed to meats sliced at deli counters. The CDC identified Boar’s Head brand liverwurst as the likely source. Among the agencies involved in the investigation is the Maryland Department of Health, which, in collaboration with the Baltimore City Health Department, collected an unopened liverwurst product from a retail store for testing as part of an outbreak investigation. It tested positive for the outbreak strain of *Listeria monocytogenes* matching that had been found to be present in lab samples for victims.

7. On July 26, 2024, Defendant BOAR'S HEAD PROVISIONS CO., INC., located in Jarratt, Virginia., recalled all liverwurst products produced by the establishment that were in the stream of commerce because of the possibility it was adulterated with *Listeria monocytogenes*. The company also recalled additional deli meat products that were produced on the same line and on the same day as the liverwurst and, therefore, also possibly adulterated with *Listeria monocytogenes*. The recall of products manufactured by Defendant BOAR'S HEAD PROVISIONS CO., INC. included approximately 207,528 pounds of deli style meat.

8. Notwithstanding the recall, USDA-FSIS remains concerned that some products may be in consumers’ refrigerators and in retail deli cases. Consumers who have purchased these products are urged not to consume them and retailers are urged not to sell these products with the referenced sell by dates. These products should be thrown away or returned to the place of purchase. Consumers who have purchased these products are also urged to clean refrigerators thoroughly to prevent the risk of cross-contamination.

9. Federal Inspectors continue to identify numerous violations at Defendant BOAR'S HEAD PROVISIONS CO., INC.'s plant in Jarratt, Virginia as part of their investigation into the Listeria Outbreak.

10. Defendant BOAR'S HEAD PROVISIONS CO., INC.'s plant has been written up by inspectors, with issues dating back years prior to the deadly outbreak that took the life of the Decedent, MARILYN PAGANO. The USDA-FSIS is investigating the outbreak to assess whether criminal charges are warranted.

Decedent, MARILYN PAGANO's Illness

11. On or about June 8, 2024, the Decedent, MARILYN PAGANO, received food products that were ordered from the Defendant, BOAR'S HEAD PROVISIONS CO., INC., on June 7, 2024, namely Blazing Buffalo Roasted Chicken Breast, Bologna, Deluxe Ham, and Maple Glazed Honey Coat Turkey Breast. In the coming days, she consumed the food products on various occasions. The Decedent, MARILYN PAGANO, subsequently became ill, suffering from a stiff neck, headache, weakness, diarrhea, and fatigue, and was hospitalized. The Decedent, MARILYN PAGANO, preferred to buy Boar's Head products because she thought they were a superior brand that she could trust.

12. On June 16, 2024, the Decedent, MARILYN PAGANO, arrived at Riverview Medical Center by ambulance, shortly after 7:00 PM. That evening, the Decedent, MARILYN PAGANO, developed a fever of 105 degrees. The Decedent, MARILYN PAGANO, was given a spinal tap, which was difficult to administer as she was moaning and writhing in pain.

13. Eventually, the hospital was able to complete the spinal tap, and the results came back positive for listeria meningitis. The Decedent, MARILYN PAGANO, was started on two (2)

separate antibiotics. In two (2) days her condition worsened, and she was transferred from CCU to ICU and placed on a ventilator.

14. On June 25, 2024, the Decedent, MARILYN PAGANO's fever returned. Further testing showed that the Decedent, MARILYN PAGANO's, infection had spread, and that she developed acute respiratory issues. The Decedent, MARILYN PAGANO, then began having seizures.

15. On July 28, 2024, the family of the Decedent, MARILYN PAGANO, had to make the difficult decision to remove her from the ventilator as radiological testing showed brain swelling from Listeria Meningitis and slowed brain activity. Her family was advised that her death would be quick, however her spent the next couple of agonizing days watching their mother and wife slip away, while in a great deal of pain and discomfort. The Decedent, MARILYN PAGANO, tragically passed away due to Listeria Meningitis on July 4, 2024.

16. Health officials later determined that the cause of death for the Decedent, MARILYN PAGANO, to be in Listeria Meningoencephalitis, cardiorespiratory arrest and acute respiratory failure.

COUNT I
(STRICT LIABILITY)

1. Plaintiffs repeat each and every allegation contained in the above paragraphs as though fully set forth at length herein.

2. At all times relevant hereto, Defendant BOAR'S HEAD PROVISION CO., INC. was in the business of producing, manufacturing, preparing, marketing, selling, supplying and serving food products (the "Product") to the general public for consumption by persons like the Decedent, MARILYN PAGANO, and Defendant BOAR'S HEAD PROVISION CO., INC. advertised these products in the State of New Jersey.

3. There was a manufacturing defect in the Product when it left the possession and control of Defendant BOAR'S HEAD PROVISION CO., INC. The Product was defective because it contained listeria. The presence of listeria was a condition of the product that rendered it unreasonably dangerous to the Decedent, MARILYN PAGANO.

4. There was a marketing defect in the Product when it left the possession and control of Defendant BOAR'S HEAD PROVISION CO., INC. The Product was defective because it contained listeria and Defendant failed to give adequate warnings of the product's dangers that were known or by the application of reasonably developed human skill and foresight should have been known. Defendant BOAR'S HEAD PROVISION CO., INC. also failed to give adequate warnings and instructions to avoid such dangers. The failure by Defendant BOAR'S HEAD PROVISION CO., INC. to provide such warnings and instructions rendered the Product unreasonably dangerous to the Decedent, MARILYN PAGANO.

5. The Product reached the Decedent, MARILYN PAGANO, without substantial change in the condition in which the Product was sold.

6. The Product was defective and unreasonably dangerous at the time that it was manufactured and distributed and at the time the Decedent, MARILYN PAGANO, was exposed to it. Said defects in the Product include, but are not limited to:

- a. Contamination with listeria, a deadly pathogen;
- b. The presence of listeria in the Product;
- c. The Products was designed and manufactured in such a way, and under such conditions, that led it to be contaminated;
- d. Lack of sufficient warnings to advise consumers, like the Decedent, MARILYN PAGANO, of the hazards presented due to the presence of listeria in the Product;

e. The Product failed to perform as safely as an ordinary consumer would expect when used as intended or in a manner reasonably foreseeable by consumers such as the Decedent, MARILYN PAGANO;

f. The risk of damage in the product's design outweighed the benefits obtained with the use of the product and reasonable alternatives to the contaminated product were readily available; and

g. The product failed to perform safely and reached decedent without substantial change affecting its condition.

7. The conduct by Defendant BOAR'S HEAD PROVISION CO., INC. and the Product were direct and proximate causes of the death of the Decedent, MARILYN PAGANO.

8. The Decedent, MARILYN PAGANO, contracted listeriosis after consuming the Product.

9. The ingestion of the Product contaminated with listeria caused great pain and suffering, including anguish of mind and body and loss of capacity for the enjoyment of life and said injuries directly and proximately caused the death of the Decedent, MARILYN PAGANO.

10. As a further direct and proximate result of the defects described above, and the wrongful death of Decedent, MARILYN PAGANO, the Estate has incurred substantial damages including but not limited to loss of prospective net accumulations of an estate, which might reasonably have been expected but for the wrongful death, reduced to present money value, medical expenses and/or funeral expenses which have become a charge against her Estate or which were paid by or on behalf of the Decedent, MARILYN PAGANO, as well as other damages

11. As a further direct and proximate cause of the defects described above and the wrongful death of the Decedent, MARILYN PAGANO, her surviving spouse, the plaintiff,

THOMAS PAGANO, has suffered and continues to suffer damages including but not limited to the loss of support and services, companionship, protection, instruction, and guidance; medical or funeral expenses due to injury and death of the Decedent, MARILYN PAGANO; and has suffered and will continue to suffer mental pain and suffering. This includes losses from the date of injury to the death of the Decedent, MARILYN PAGANO, and future loss of support and services from the date of death, mental pain and suffering from the time of her injury, and medical and funeral expenses.

WHEREFORE, the Plaintiffs, JOY GROSS, As Proposed Administratrix of the ESTATE OF MARILYN PAGANO, Deceased, JOY GROSS Individually, THOMAS PAGANO, and LAURA SMITH, demand judgement against the Defendant, BOAR'S HEAD PROVISION CO., INC., for damages, together with pre- and post-judgment interest, costs of suit and such other relief as the Court deems necessary and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury as to all issues raised herein so triable.

Respectfully submitted,
ELEFTERAKIS, ELEFTERAKIS & PANEK

Dated: March 20, 2025

By: /s/ Nicholas L. Leider, Esq.
Nicholas L. Leider, Esq.
N.J. Bar No. 279532018
80 Pine Street, 38th floor
New York, NY 10005